Supreme Court, U.S.
FILED
MAR 12 1993
OFFICE OF THE CLERK

No. 92-1127

In the Supreme Court of the United States

OCTOBER TERM, 1992

JOHN R. HELTON, ET AL., PETITIONERS

v.

FEDERAL DEPOSIT INSURANCE CORPORATION, AS RECEIVER FOR VICTOR SAVINGS AND LOAN ASSOCIATION

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS FOR THE STATE OF OKLAHOMA

BRIEF FOR THE RESPONDENT IN OPPOSITION

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QUESTION PRESENTED

Whether this Court's decision in *D'Oench, Duhme & Co.* v. *FDIC*, 315 U.S. 447 (1942), and 12 U.S.C. 1823(e) (1988 & Supp. III 1991) bar petitioners' defenses to liability under notes and guaranties held by the FDIC.

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OPINIONS BELOW

The order of the Oklahoma Supreme Court denying a petition for discretionary review (Pet. App. A167) is unreported. The opinion of the Oklahoma Court of Appeals (Pet. App. A146-A150) is unreported. The opinions of the trial court (Pet. App. A90-A94, A95-A103) are unreported.

JURISDICTION

The judgment of the Oklahoma Court of Appeals was entered on December 3, 1991. The judgment of the Oklahoma Supreme Court denying discretionary review was entered on September 23, 1992. The petition for a writ of certiorari was filed on December 22, 1992. The jurisdiction of this Court is invoked under 28 U.S.C. 1257(a).

STATEMENT

1. On May 13, 1983, Sooner Vista Partnership (the Partnership) executed a promissory note payable to Victor Federal Savings and Loan Association (Victor Federal) in the amount of $217,843.21. On the same day, the Partnership executed a mortgage securing its obligation to repay the note. Petitioners, partners in the Partnership, also executed written guaranty agreements on the same day, in which each of them guaranteed payment of a portion of the indebtedness evidenced by the note. Pet. App. A97.

On March 13, 1987, the Federal Home Loan Bank Board (FHLBB) appointed the Federal Savings and Loan Insurance Corporation (FSLIC) as receiver for Victor Federal. On the same day, the assets of Victor Federal were transferred to a newly chartered institution, Victor Savings and Loan Association (Victor Savings). In July 1988, the FHLBB also appointed FSLIC receiver for Victor Savings. When the Partnership subsequently defaulted on the note, FSLIC, as receiver for Victor Savings, filed suit to enforce the note and the guaranties in the District Court of Delaware County, Oklahoma. Pet. App. A97-A99.

2. Petitioners raised a number of defenses, including assertions that a renewal note executed by the Partnership amounted to a novation that released them from liability under the note and their respective guaranties. The district court rejected those arguments and granted summary judgment for the FDIC.[1] Pet. App. A95-A103.

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[1] FSLIC was abolished on August 9, 1989, pursuant to the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA), Pub. L. No. 101-73, § 401, 103 Stat. 354. The Federal Deposit Insurance Corporation (FDIC) has succeeded to all FSLIC's rights and duties as receiver for Victor Savings. 12 U.S.C. 1821a(a)(5)(A)(ii) (Supp. III 1991) (providing that

The court explained that petitioners were "estopped pursuant to *D'Oench, Duhme & Company* v. *FDIC*, 315 U.S. 447 (1942), and its progeny" from raising certain defenses, and that other defenses failed "as a matter of law." Pet. App. A99.[2]

3. Petitioners then filed a motion for reconsideration, contending, among other things, that they were not subject to joint and several liability, because each of them was liable only for a pro rata share of the obligation. The district court denied the motion in November of 1989. Pet. App. A90-A94. The court reiterated its view that petitioners' defenses were barred by the application of *D'Oench, Duhme & Co.* v. *FDIC*, 315 U.S. 447 (1942), and the related provisions of 12 U.S.C. 1823(e) (1988 & Supp. III 1991). Pet. App. A92.

4. The Oklahoma Court of Appeals affirmed. Pet. App. A146-A150. After reviewing the record, the court concluded that none of petitioners' claims had been properly preserved:

> The state of the record in this case makes it unnecessary to address the issues briefed by [petitioners], because none of the issues raised and briefed on appeal were properly preserved or presented for review and disposition. The single issue of novation raised in the response to the motion for summary judgment was not raised on appeal, while the question of pro rata liability presented on

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"[e]ffective August 10, 1989, the Corporation shall succeed [FSLIC] as * * * receiver with respect to any depository institution * * * for which a * * * receiver was appointed before January 1, 1989"); see also 12 U.S.C. 1811 (Supp. III 1991) (references to the "Corporation" describe the Federal Deposit Insurance Corporation).

[2] The decision is reflected in a journal entry entered on January 17, 1990, Pet. App. A103, but was made at a hearing in September 1989, see *id.* at A96.

> appeal was not raised in the motion for summary judgment before the trial court.

Id. at A149.

5. The court of appeals denied a petition for rehearing without opinion. Pet. App. A157. The Supreme Court of the State of Oklahoma denied a petition for a writ of certiorari without opinion. *Id.* at A167.

ARGUMENT

This Court's jurisdiction under 28 U.S.C. 1257(a) does not extend to cases in which an adequate and independent state ground supports the judgment of the state court:

> This Court from the time of its foundation has adhered to the principle that it will not review judgments of state courts that rest on adequate and independent state grounds. * * * The reason is so obvious that it has rarely been thought to warrant statement. It is found in the partitioning of power between the state and federal judicial systems and in the limitations of our own jurisdiction. Our only power over state judgments is to correct them to the extent that they incorrectly adjudge federal rights.

Herb v. *Pitcairn*, 324 U.S. 117, 125-126 (1945); see generally Charles Alan Wright, *The Law of Federal Courts* § 107, at 745-748 (4th ed. 1983). When an adequate and independent state ground exists, the Court has no jurisdiction over a petition challenging the decision of the state court. See *Fox Film Corp.* v. *Muller*, 296 U.S. 207, 210 (1935) ("our jurisdiction fails if the non-federal ground is independent of the federal ground and adequate to support the judgment"); Robert L. Stern et al., *Supreme Court Practice* § 3.25, at 168-169 (6th ed. 1986).

The decision of the Oklahoma Court of Appeals in this case rests on an adequate and independent state ground: petitioners' failure to comply with conventional rules for

preserving a claim for presentation on appeal. Because the state court determined that the only claims petitioners properly presented on appeal were not claims petitioners properly had raised in opposition to respondent's motion for summary judgment, the court acted reasonably in declining to address petitioners' claims, and no issue of federal law affected that action. Because the decision of the state court did not determine any federal question, this Court has no jurisdiction to review that decision.

In any event, the petition does not present any substantial question that would merit this Court's attention. The principal contention (Pet. 10-11) seems to be that the lower courts misapplied the *D'Oench, Duhme* doctrine in determining that petitioners could not avoid liability under written documents by means of defenses not set forth in those documents or in other documents contained in the official records of the failed institution. That ruling is an unexceptionable application of the language of 12 U.S.C. 1823(e) (1988 & Supp. III 1991) and this Court's decision in *D'Oench, Duhme*; none of the cases cited by petitioners suggest anything to the contrary. To the extent petitioners suggest (Pet. 12) that the state trial court had no jurisdiction, they are incorrect. The Oklahoma trial court was a court of general rather than limited jurisdiction. See Okla. Const. art. VII, § 7(a).

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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MARCH 1993